STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
WILLIAM N. PATTERSON, Complainant, vs. **PATTERSON RECALL COMMITTEE, INC.,** Respondent.	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **OS 20070021**

AGENCY DECISION

This matter is before the Office of Administrative Courts ("OAC") on the complaint of William Patterson ("Complainant") against the Patterson Recall Committee, Inc. ("Respondent Committee" or "Committee"). The complaint was filed with the Colorado Secretary of State ("Secretary") on November 2, 2007. On November 7, 2007, the Secretary referred the complaint to the OAC as required by Colo. Const. art. XXVIII, § 9(2)(a). The case was assigned to an Administrative Law Judge ("ALJ") and a hearing was scheduled on November 23, 2007 in Denver, Colorado.

On November 16, 2007, Complainant requested a continuance of the November 23 hearing. Respondent did not oppose the request. The hearing was rescheduled on January 23, 2008. On January 23, 2008, Complainant appeared at the hearing and was represented by Michael T. Gilbert, Esq. One member of the Respondent Committee was also present at hearing. Respondent was represented by Mark E. Haynes, Esq. and Stefania C. Scott, Esq. The January 23 hearing was held before ALJ Michelle A. Norcross. At hearing, the ALJ admitted Complainant's exhibits: 1 – 4, 6 – 12, 14, 15 (page 1 only), 16 –18, 20 (pages 1-3 and 5-8 only), 22, and 25 into evidence. The proceedings were digitally recorded in courtroom 6. The record was held open for the submission of post hearing briefs concerning the applicability of *Colorado For Family Values v. Meyer*, 936 P.2d 631 (Colo.App. 1997) to this case. The record closed on January 30, 2008 when the ALJ received the Complainant's response.

Parties' Positions

Complainant: Complainant alleges that the Respondent Committee violated § 1-45-108(6), C.R.S. of the Fair Campaign Practices Act ("FCPA" or "Act") and § 3(9) of Article XXVIII of the Colorado Constitution by failing to disclose all contributions received and expenditures made between May 2007 and January 2008, by failing to file reports of contributions and expenditures since September 10, 2007, and by failing to establishing a separate bank account.

Respondent Committee: The Committee asserts that the complaint should be dismissed because the Committee had no obligation to file any disclosure reports once it was determined that there would be no recall election, which was decided by the Montrose County Clerk and Recorder on August 14, 2007. Additionally, the Committee contends that it complied with all its registration and reporting requirements prior to August 14, 2007, which is all the law requires.

FINDINGS OF FACT

1. Complainant currently holds the office of County Commissioner in Montrose County, Colorado.

2. In May 2007 Al Head, Joe Goecke, and Mike Gordon, the three named members of the Respondent Committee, with the assistance of Mark Haynes and Stefania Scott of Ireland Stapleton Pryor & Pascoe, P.C. (hereinafter "counsel"), drafted a petition to establish a recall election for the purpose of recalling the Complainant.

3. On May 29, 2007, the Committee submitted its Petition to Recall Bill Patterson from the Office of County Commissioner of Montrose County, Colorado with Montrose County Clerk and Recorder ("Clerk and Recorder").

4. The Clerk and Recorder approved the form of the petition as submitted by the Committee. There is no evidence concerning the exact date the petition was approved. However, it is undisputed that the form of the petition was approved after its submission on May 29. The Committee began collected signatures during the months of June and July 2007. There is no evidence as to when the first petition was signed, but the parties agree that the Committee began gathering signatures in June 2007.

5. On June 27, 2007, Mark Haynes registered the Respondent Committee as an issue committee with the Secretary's office. The purpose of the committee is to support the recall of Commissioner Patterson. The Clerk and Recorder provided Mr. Haynes, as the Committee's registered agent, with three disclosure reports to be filed for the months of July, August and September 2007.

6. On July 31, 2007, the Respondent Committee submitted the signed recall petitions to the Clerk and Recorder. The petitions contained 5,583 signatures.

7. On August 14, 2007, the Clerk and Recorder issued a Notice of Insufficiency, wherein she rejected approximately 59% of the signatures. Due to an insufficiency of signatures, no recall election was established.

8. On August 29, 2007, the Respondent Committee, through their counsel, filed a Protest of Notification of Insufficiency. On September 7, 2007, a hearing was held on the protest before the Clerk and Recorder. The Respondent Committee was represented at that hearing by counsel.

9. The Respondent Committee was not successful in its challenge. Following the September 7 hearing, the Clerk and Recorder upheld her prior determination that there were insufficient signatures to establish a recall election. The Respondent Committee is currently pursing an appeal of the Clerk and Recorder's decision in the Montrose County District Court and is still pursing its efforts to establishing a recall election. Counsel is assisting the Committee in its petition appeal and represented the Committee at the hearing on this complaint.

10. As of January 23, 2008, the Respondent Committee has filed only three reports of contributions and expenditures. The first report was filed on July 12, 2007 for the reporting period: June 27, 2007 through July 6, 2007. The July 12 report disclosed a contribution of $14,300 from Kienholz Miller & CO on June 28, 2007 and an expenditure of $14,300 to Colorado Winning Edge on July 12, 2007.

11. The second report was filed on August 15, 2007 for the reporting period: July 7, 2007 through August 6, 2007. The third and final report was filed on September 10, 2007 for the reporting period: August 7, 2007 through September 14, 2007. The August 15 and September 10 reports declare that the Committee did not receive any contributions or make any expenditures between July 7 and September 4, 2007.

12. All three reports state that the Committee has an account at Wells Fargo in Montrose, Colorado. The Respondent Committee concedes that it never established a separate account at Wells Fargo as reported in its filings.

13. Since May 2007, Mr. Haynes and Ms. Scott have provided legal services to the Committee and assisted it in its attempts to establish a recall election, including but not limited to drafting the petition, corresponding with the Clerk and Recorder's office, filing campaign reports, representing the Committee in several legal proceedings, filing appeals, and defending it in this proceeding. The Committee has not disclosed receipt of any of these services in its reports, as either contributions or expenditures, and has not been forthcoming with Complainant's attempts to determine who is paying for the Committee's legal representation.

14. Regardless of who is or has been paying counsels' fees, it is undisputed that the Committee has been the direct beneficiary of counsels' services. The ALJ finds that those services are a contribution to the Committee, which should have been disclosed in its July, August and September 2007 reports. It is unknown if the Committee incurred any costs associated with receiving such legal services. If they have, those costs should have also been disclosed as expenditures in its filed reports.

15. The evidence also established that on June 6, 2007 the Committee paid for the printing of the petitions, which was not included in the July 12 report. Additionally, during the month of July 2007 at least one advertisement urging voters to sign the Patterson Recall Petition ran in the Montrose Daily Press and several voters received robo calls urging support for the recall election. However, there is insufficient evidence to determine whether the Committee or a third person paid for the advertisement or the

automated calls or whether these expenditures are included in the $14,300 expenditure disclosed in the July 12 report.

16. The Committee has not filed any reports of contributions or expenditures since September 10, 2007. The Committee is still registered as an issue committee with the Secretary and is still attempting to get the recall election on the ballot.

DISCUSSION

It is the Respondent Committee's positing that as of August 14, 2007 when the Clerk and Recorder determined that there would not be a recall election, there was no longer a ballot issue or ballot question and the Committee's reporting obligations ceased. Complainant argues that the matter became a ballot issue once the petitions were circulated and signed and that the Committee's reporting obligations did not stop simply because the issue never got placed on the ballot. For the reasons discussed below, the ALJ concludes that the plain language of § 2(10) in Article XXVIII and Secretary of State Rule 1.6 (8 CCR 1505-6) do not support the Respondent Committee's position.

Issue Committee

Article XXVIII defines an "issue committee" as "any person, other than a natural person, or any group of two or more persons, including natural persons that has a major purpose of supporting or opposing any ballot issue or ballot question *or*[1] that has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question." Colo. Const. art. XXVIII, § (2)(10)(a)(I) and (II). In June 2007 the Committee itself determined that it meet the definition of an issue committee and duly registered as such with the Secretary. At that time, the Committee concedes that it had a major purpose of supporting a ballot issue (i.e. establishing a recall election) and had received and/or spent more than $200 to support that issue. Under the plain language of § 2(10), the ALJ finds that an unsuccessful petition drive does not change the Committee's status as an issue committee. The Committee is still registered as an issue committee with Secretary, still has a major purpose of supporting a ballot issue, even if that issue is not yet on a ballot, and is still receiving substantial contributions in the form or legal services to support its stated purpose. The fact that the Committee has not yet been successful in its attempt to get the matter on the ballot does not change its status as an issue committee.

The terms "ballot issue" and "ballot question" are defined in § 1-1-104(2.3) and (2.7), C.R.S., respectively. "Ballot issue" means a state or local government matter arising under section 20 of article of the state constitution, as defined in sections 1-41-102(4) and 1-41-103(4), respectively. "Ballot question" means any state or local government matter involving a citizen petition or referred measure, other than a ballot issue. The ALJ finds that neither of these definitions is instructive or provides much

[1] 8 CCR 1505-06, Rule 1.7 b (a group of persons is an issue committee only if it meets both of the conditions in Article XXVIII, Section 2(10)(a)(I) and 2(10)(a)(II).)

guidance on determining when a matter becomes an issue for purposes of § 2(10). However, the Secretary's rules, specifically 8 CCR 1505-6, Rule 1.6, speaks directly to this question.

Rule 1.6 provides:

> "Issue", as used in Article XXVIII of the Colorado Constitution and Article 45 of Title 1, C.R.S., shall mean a "ballot issue" or "ballot question" as such terms are defined in section 1-1-104(2.3) and (2.7), C.R.S. For the purpose of Article XXVIII, section 2(10) of the Colorado Constitution, a matter shall be considered an "issue" at the earliest of the following:
>
> a. It has had a title designated and fixed in accordance with law;
>
> b. It has been referred to the voters by a governing body or the general assembly;
>
> c. In the case of a citizen referendum petition, it has been submitted for format approval in accordance with law;
>
> d. A petition has been circulated and signed by at least one person; except that, where a matter becomes an "issue" upon such signing, a person or persons opposing such issue shall not be considered an "issue committee" until one such person knows or has reason to know of the circulation; or
>
> e. A signed petition has been submitted to the appropriate election official in accordance with law.

In the instant case, the recall petition was circulated and signed by at least one person in June 2007. Therefore, in accordance with Rule 1.6 d., there was a ballot issue or ballot question in June 2007. Rule 1.6 does not state that the triggering events in subparagraphs a. - e. are predicated on a successful campaign as argued by the Committee. To find otherwise would render the rule meaningless. A rule of the Secretary of State must be construed as presumptively valid. *Colo. Ground Water Comm'n v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 217 (Colo. 1996). And since the Secretary is the government official responsible for the administration of campaign finance laws, his or her construction is entitled to great weight. *Mile High Greyhound Park, Inc. v. Colo. Racing Comm'n*, 12 P.3d 351 (Colo.App. 2000) *See also*, *Davis v. Conour*, 178 Colo. 376, 497 P.2d 1015 (1972) (in interpreting a statute one should look

to the contemporaneous construction of the act by the public officials charged with its administration.)

The ALJ concludes that in accordance with Rule 1.6, at the earliest occurrence of any one of the events in subparagraphs a. – e., the matter becomes and remains an "issue" for purposes of defining an "issue committee" in § 2(10) irrespective of the success or failure of the petition drive, which then subjects the Committee to the Act's reporting obligations. And that obligation continues until the Committee is terminated in accordance with the Secretary's rules. See Rules 3.4 and 4.16.

This same question of whether the reporting obligations of the FCPA apply to an advocacy group whose petition efforts were unsuccessful was presented to the Colorado Court of Appeals in *Colorado For Family Values v. Meyer*, 936 P.2d 631 (Colo.App. 1997). In *CFV v. Meyer*, following the passage of Amendment 2, Colorado for Family Values ("CFV") started an effort to repeal the Amendment. CFV's proposed initiative went through the title setting process but was never placed on the ballot because its proponents failed to present the required number of signatures. Prior to the date the initiative failed, a private citizen filed a complaint alleging that CFV was in violation of the FCPA's reporting requirements because the group failed to register as a political committee or report its contributions. Just as in this case, the plaintiff, CFV, argued that it did not have to register or file disclosure reports because the measure was never actually placed on the ballot. After a hearing on complaint, the ALJ and ultimately the Secretary determined that even though the measure was never placed on the ballot, the repeal attempt constituted an "issue" under the Act and therefore CFV was required to register and file disclosure reports. The Colorado Court of Appeals affirmed the Secretary's decision. In affirming the agency decision, the court looked first to the plain language of the statute, then examined the legislative purpose of the Act, and finally considered the consequences of adopting the plaintiff's construction.

In the instant case, the Respondent Committee argues that *CFV v. Meyer* is not applicable because it was decided under the campaign finance statute that was repealed by the adoption of Article XXVIII and there is no longer a definition of "issue"[2] only a definition of "issue committee". Respondent is correct that *CFV* was decided prior to the passage of Article XXVII and that there is no longer a definition of "issue" in the Act. However, despite these distinctions, the ALJ finds the court's analysis in *CFV* instructive and persuasive in determining the question presented in this appeal, particularly since the underlying fundamental policy concerns of the campaign finance disclosure laws have not change with the passage of Article XXVIII.

In determining the voters intent, the ALJ looks to § 1 of Article XXVIII which provides, in pertinent part, ". . . that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process. . . and that the

[2] The definition of "issue", in pertinent part, as cited in *CFV v. Meyer* is, "any proposition or initiated or referred measure which is to be submitted to the electors for their approval or rejection." *Id*. at 632.

interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding electioneering communications, and strong enforcement of campaign finance requirements." At the time *CFV* was decided, similar public policy concerns were expressed and the court found that, "the General Assembly has made plain that the Act's purpose is to ensure that voters are informed about the influences on the electoral process." *Id*. at 633.

Finally, in its opinion, the *CFV* court considered the consequences of adopting the plaintiff's construction and found:

> Here, under plaintiff's interpretation of the Act, groups would be free to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not sign a particular petition. Such groups would thus be in a position to exert significant influence on the success or failure of an initiative – including whether the initiative would be place on the ballot and put to a public vote at all – without having their activities subject to the Act. Such a result is clearly at odds with a statute enacted to open to public view the financial contributions of those seeking to affect the public's response.

Id. at 634.

Similarly, if the ALJ adopted the Respondent Committee's interpretation of § 2(10), the Committee would be in a position to exert influence over the outcome of its initiative and never be required to disclose who is contributing to those efforts or what campaign activities the group is undertaking. The ALJ finds that outcome also at odds with the stated purpose of Article XXVIII. Accordingly, the ALJ concludes that the Committee became an "issue committee" when the petition was circulated and signed by at least one person and that status has not changed simply because the issue was never place on the ballot. The Committee therefore has an ongoing duty to comply with the reporting requirements of the FCPA.

Reporting Requirements of the FCPA

Under § 1-45-108(6), C.R.S.,

> Any issue committee whose purpose is the recall of any elected official shall file a committee registration with the appropriate officer within ten business days after receiving its first contribution. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

The Committee filed reports for the months of July, August, and September 2007. It has not filed any reports since September 10, 2007. The Committee is in violation of § 1-45-108(6) for failing to file reports of contributions and expenditures for the months of October, November, December 2007 and January 2008.[3] Moreover, the Committee's reporting requirements continue regardless of whether there has been any activity to report during the reporting periods. See, Rule 4.16 (8 CCR 1505-6) (until terminated in accordance with these rules, a committee shall file a disclosure report for every reporting period, even if the committee has no activity (expenditures or contributions) to report during the reporting period.)

As for the reports that were filed in July, August, and September 2007 it is undisputed that they contain no information about contributions or expenditures related to the substantial legal services that have been provided to the Committee. Under Article XXVIII, § 2(5)(a)(I) – (IV), a "contribution" is defined as:

> (I) the payment, loan, pledge, gift, or advance of money, or guarantee of loan made to any candidate committee, issue committee, political committee, small donor committee, or political party; (II) any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party; (III) the fair market value of any gift or loan of property made to any candidate, issue, political, small donor committee or political party; or (IV) anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall or election.

And under Article XXVIII, § 2(8)(a), an "expenditure" is defined as:

> any purchase, payment distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

Regardless of whether counsels' legal services are being paid by the Committee, by a third person or are being provided pro bono, the services are being directly provided to the Committee and are being provided for the benefit of the Committee. Thus, they should have been disclosed as a contribution on the Committee's filed reports. Further, if the Committee has paid for any of the legal work they have received, those expenditures should have also been disclosed in the three-filed reports. In addition to the omission of contributions and/or expenditures related to the legal services, the Committee's July 12 report is incomplete in that the printing cost of the

[3] The Committee's reporting responsibilities are ongoing; however, because the evidentiary record closed on January 23, 2008, the ALJ cannot and does not address any violations that may or may not have occurred since January 23, 2008.

petitions was not included as an expenditure, but it was paid for by a Committee member.

Section 3(9) of Article XVIII and Rule 4.18 (8 CCR 1505-6) require that all contributions received by an issue committee be deposited in a financial institution in a separate account whose title must include the name of the committee. The Respondent Committee did not comply with this requirement. Although a Wells Fargo account was listed on the Committee's registration form and in its reports, at hearing, the Committee conceded that it did not open a separate account at that financial institution or deposit any contributions into a separate account at Wells Fargo as disclosed.

CONCLUSIONS OF LAW

1. Pursuant to Colo. Const, art. XXVIII, § 9(2)(a), the ALJ has jurisdiction to conduct a hearing in this matter and to impose appropriate sanctions.

2. The issues in a hearing conducted by an ALJ under Article XXVIII of the Colorado Constitution are limited to whether any person has violated Sections 3 through 7 or 9(1)(e) of Article XXVIII, or Section 1-45-108, 114, 115, or 117, C.R.S. (2007). Colo. Const. art. XXVIII, § 9(2)(a). If an ALJ determines that a violation of one of these provisions has occurred, the ALJ's decision must include the appropriate order, sanction or relief authorized by Article XXVIII. Colo. Const. art. XXVIII, § 9(2)(a).

3. Colo. Const. art. XXVIII, § 9(1)(f) provides that the hearing is conducted in accordance with the Colorado Administrative Procedure Act (APA)[4]. Under the APA, the proponent of an order has the burden of proof. Section 24-4-105(7), C.R.S. In this instance, Complainant is the proponent of an order seeking civil penalties against the Respondent Committee for violations of the Colorado Constitution and the FCPA. Accordingly, Complainant has the burden of proof.

4. Complainant has established, by a preponderance of the evidence, that the Respondent Committee violated the provisions of § 1-45-108(6), C.R.S. by failing to file reports of contributions and expenditures for the months of October, November and December 2007 and January 2008.

5. Complainant has established, by a preponderance of the evidence, that the legal services that have been provided to the Committee since May 2007 are "contributions" as defined in § 2(5)(a)(I) –(IV) of Article XXVIII.

6. Complainant has established, by a preponderance of the evidence, that the Respondent Committee violated the provisions of § 1-45-108, C.R.S. by failing to disclose all its contributions and/or expenditures, namely those relating to the receipt of its legal services and petition printing costs, in its reports that were filed in July, August and September 2007.

[4] Section 24-4-101, *et seq*., C.R.S. (2007)

7. Complainant has established, by a preponderance of the evidence, that the Respondent Committee violated the provisions of Colo. Const. art. XXVIII, § 3(9) by failing to set up a separate account at a financial institution for the receipt of contributions.

AGENCY DECISION

It is the Agency Decision of the Administrative Law Judge that the Respondent Committee failed to comply with the requirements of the reporting and disclosure requirements in § 1-45-108(6), C.R.S. as well as Article XXVIII, § 3(9) of the Colorado Constitution.

Civil Penalties

Once a violation has been established, the Administrative Law Judge must include in the Agency Decision the appropriate order, sanction or relief authorized by the FCPA. Colo. Const. art. XXVIII, § 9(2)(a). Accordingly, an order issued by the Administrative Law Judge in this case must relate to a violation of one of the identified constitutional or statutory provisions, and any sanction must be authorized by Article XXVIII of the Colorado Constitution. One sanction authorized by Article XXVIII is the imposing of a $50 penalty for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of Article XXVIII or sections 1-45-108, 109 and 110, C.R.S. is not filed by the close of business on the day due. However, since ALJ is not "the appropriate officer" for purposes of this section, she is therefore not required to impose a $50 per day sanction and has discretion to reduce a penalty upon a showing of good cause. *See*, Colo. Const. art. XXVIII, § 10(2)(b)(I).

The ALJ has concluded that the Respondent Committee violated § 1-45-108(6), C.R.S. by not filing any reports of contributions or expenditures since September 10, 2007; however the ALJ is not imposing a civil penalty in connection with this violation. The ALJ determines that the Respondent Committee in good faith believed that its ongoing reporting obligations stopped when the Clerk and Recorder determined that there would be no recall election. And although the ALJ disagrees with the Committee's interpretation of the Act, there is no evidence that the Committee intentionally tried to withhold information from the public about its activities by simply refusing to file ongoing reports.

However, with regard the to violations of § 1-45-108, C.R.S. for failing to fully disclose all the Committee's contributions and/or expenditures in its reports (i.e. legal services and printing costs), the ALJ imposes a civil penalty in amount of $9,750 ($50 per day for 195 days July 12, 2007 - January 23, 2008). When the Committee itself determined in June 2007 that it needed to register as an issue committee and file reports in July, August and September 2007, it had a duty to fully comply with the state's campaign disclosure laws and it did not. At hearing, the Committee did not present any evidence to explain why it failed to fully disclose all its contributions and expenditures for the months of July, August and September 2007 or why it never corrected the inaccurate information in the reports about the Wells Fargo account.

Accordingly, the ALJ imposes the maximum penalty of $50 per day for these disclosure violations.

Attorneys Fees

At hearing, Complainant requested that the ALJ order the Respondent Committee to pay his attorney fees and costs associated with this complaint because the Committee has not been forthcoming with information he has requested about who is paying the Committee's legal fees and costs.

The FCPA permits the ALJ to award attorney fees under § 1-45-111.5(2), C.R.S. Section 1-45-111.5(2), C.R.S., provides, in pertinent part:

> A party in any action brought to enforce the provisions of article XXVIII of the state constitution…shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

Although the Complainant established that he made numerous attempts to obtain information about who was paying for the Committee's legal services and did not received adequate responses, there is no evidence that these attempts unnecessarily expanded the proceeding. The only procedural delay in the proceeding was at the request of the Complainant to continue the hearing, which was done to accommodate previously planned holiday vacations and for the service of subpoenas. Further, despite the lack of information about the Committee's legal bills, the Complainant was able to successfully present his case at the hearing on January 23, 2008. For these reasons, the ALJ denies the Complainant's request for attorney fees. Each party is responsible for paying its own attorney fees and costs associated with the November 2, 2007 complaint. This decision is subject to review with the Colorado Court of Appeals, pursuant to § 24-4-106(11), C.R.S. and Colo. Const. art. XXVIII, § 9(2)(a).

DONE and SIGNED
February 14, 2008

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MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **AGENCY DECISION** was served by e-mailing and placing same in the U.S. Mail, postage prepaid, at Denver, Colorado to:

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DATED: _____ _____
Court Clerk